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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ALEXIOS KAFATOS, individually and) Case No.
on behalf of all others similarly situated,)

) **CLASS ACTION**

Plaintiff,

vs.

CREDIT ONE BANK, N.A., and
DOES 1 through 10, inclusive,

Defendant.

1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227 ET SEQ.]
 2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227 ET SEQ.]
 3. VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT [CAL. CIV. CODE §1788 ET SEQ.]

) DEMAND FOR JURY TRIAL

Plaintiff ALEXIOS KAFATOS (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following against Defendant CREDIT ONE

1 BANK, N.A. upon information and belief based upon personal knowledge:

2 **INTRODUCTION**

3 1. Plaintiff's Class Action Complaint is brought pursuant to the
4 Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. ("TCPA").

5 2. Plaintiff, individually, and on behalf of all others similarly situated,
6 brings this Complaint for damages, injunctive relief, and any other available legal
7 or equitable remedies, resulting from the illegal actions of Defendant in
8 negligently, knowingly, and/or willfully contacting Plaintiff no Plaintiff's cellular
9 telephone, thereby the TCPA, 47 U.S.C. § 227. Plaintiff alleges as follows upon
10 personal knowledge as to himself and his own acts and experiences, and, as to all
11 other matters, upon information and belief, including investigation conducted by
12 his attorneys.

13 3. In addition to Plaintiff's Class Claims, Plaintiff also brings an action
14 for damages as an individual consumer for Defendant's violations the Rosenthal
15 Fair Debt Collection Practices Act, Cal Civ. Code §1788, et seq. (hereinafter
16 "RFDCPA") which prohibits debt collectors from engaging in abusive, deceptive,
17 and unfair practices.

18 **JURISDICTION AND VENUE**

19 4. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
20 a resident of California, seeks relief on behalf of a Class, which will result in at
21 least one class member belonging to a different state than that of Defendant, a
22 Wisconsin company that does business in California and other States. Plaintiff
23 also seeks up to \$1,500.00 in damages for each call in violation of the TCPA,
24 which, when aggregated among a proposed class in the thousands, exceeds the
25 \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity
26 jurisdiction and the damages threshold under the Class Action Fairness Act of 2005
27 ("CAFA") are present, and this Court has jurisdiction.
28

5. Alternatively, this Court has jurisdiction over Plaintiff's TCPA claims pursuant to 28 U.S.C. § 1331.

6. Ancillary to Plaintiff's TCPA claims, this Court has jurisdiction pursuant to 28 U.S.C. § 1337(a) over Plaintiff's claims arising under the RFDCPA, Cal. Civ. Code § 1788, *et seq.* because they arise under the same case or controversy.

7. Venue is proper in the United States District Court for the Central District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does business within the State of California and Plaintiff resides within this District.

PARTIES

8. Plaintiff, ALEXIOS KAFATOS (“PLAINTIFF”), is a natural person residing in Orange County in the state of California, and is a “person” as defined by 47 U.S.C. § 153(39). Furthermore, Plaintiff is a “debtor” as defined by the RFDCPA, Cal. Civ. Code § 1788.2(h).

9. At all relevant times herein, DEFENDANT, CREDIT ONE BANK, N.A. (“DEFENDANT”), is financial institution engaged in soliciting and providing credit services and collection activity in connection with debts allegedly owed to it, and is a “person” as defined by 47 U.S.C. § 153(39). Furthermore, Defendant, at all relevant times herein, was a company engaged, by use of the mails and telephone, in the business of collecting an alleged debt from PLAINTIFF which qualifies as a “consumer debt” as defined by the RFDCPA, Cal. Civ. Code § 1788.2(f). DEFENDANT regularly attempts to collect debts in the ordinary course of its business, and therefore is a “debt collector” as defined by the RFDCPA, Cal. Civ. Code § 1788.2(c).

10. Defendants acted through their agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

11. The above named Defendant, and its subsidiaries and agents, are collectively referred to as "Defendants." The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

12. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS – TCPA

13. Beginning as early as November of 2017, Defendant contacted Plaintiff on his cellular telephone number ending in -3062, in an effort to collect an alleged debt owed from Plaintiff.

14. Defendant called Plaintiff from telephone numbers confirmed to belong to Defendant, including without limitation (909) 334-4496; (909) 334-4526; (909) 557-9991; (909) 334-4526; (909) 479-3367; (909) 479-3357; (909) 557-9989; (909) 557-9990; (909) 479-3347; (909) 479-2480; (704) 496-5354; and (866) 910-7740.

15. In its efforts to collect the alleged debt owed from Plaintiff, Defendant used an “automatic telephone dialing system,” as defined by 47 U.S.C. § 227(a)(1) to place its daily calls to Plaintiff seeking to collect an alleged debt owed.

16. Defendant's calls constituted calls that were not for emergency purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

17. Defendant's calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to *47 U.S.C. § 227(b)(1)*.

18. During all relevant times, Defendant did not possess Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on his cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

19. Furthermore, Plaintiff orally revoked any and all consent to be contacted using an automated telephone dialing system, to the extent any ever existed.

20. Despite Plaintiff's oral revocation of consent to be called, Defendant continued to call Plaintiff.

21. Plaintiff alleged upon information and belief, including without limitation his experience of being called by Defendant despite his explicit revocation of consent to be called, that Defendant failed to put in place reasonable policies and procedures to avoid violation of the TCPA.

FACTUAL ALLEGATIONS – RFDCPA

22. In addition to the facts pled above, at various times prior to the filing of the instant complaint, including within one year preceding the filing of this complaint, DEFENDANT contacted PLAINTIFF in an attempt to collect an alleged outstanding debt.

23. Beginning November of 2017, Plaintiff began receiving numerous calls from Defendant.

24. Each of these calls were made to Plaintiff in connection with collection on an alleged debt.

1 25. Upon information and belief, in or around October of 2017,
2 Defendant sold the alleged debt to a third party. However, Defendant continued to
3 contact Plaintiff in an attempt to collect upon the alleged debt.

4 26. On several occasions, Plaintiff told Defendant to stop calling him, but
5 Defendant continued to call.

6 27. The RFDCPA, Cal. Civ. Code § 1788.17 mandates that every debt
7 collector collecting or attempting to collect a consumer debt shall comply with the
8 Federal Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692b
9 through 1692j and be subject to the remedies in the FDCPA, 15 U.S.C. § 1692k.

10 28. DEFENDANT’S conduct violated the RFDCPA in multiple ways,
11 including but not limited to:

- 13 a) Causing a telephone to ring repeatedly or continuously to annoy
14 Plaintiff (Cal. Civ. Code § 1788.11(d));
- 15 b) Communicating, by telephone or in person, with Plaintiff with such
16 frequency as to be unreasonable and to constitute an harassment to
17 Plaintiff under the circumstances (Cal. Civ. Code § 1788.11(e));
- 18 c) Causing Plaintiffs telephone to ring repeatedly or continuously with
19 intent to harass, annoy or abuse Plaintiff (15 U.S.C. § 1692d(5));
- 20 d) Communicating with Plaintiff at times or places which were known
21 or should have been known to be inconvenient for Plaintiff (15
22 U.S.C. § 1692c(a)(1)); and
- 23 e) Engaging in conduct the natural consequence of which is to harass,
24 oppress, or abuse Plaintiff (15 U.S.C. § 1692d)).

25 29. As a result of the above violations of the RFDCPA, Plaintiff suffered
26 and continues to suffer injury to PLAINTIFF’S feelings, personal humiliation,
27 embarrassment, mental anguish and emotional distress, and DEFENDANT is
28 liable to PLAINTIFF for PLAINTIFF’S actual damages, statutory damages, and

1 costs and attorney's fees.

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3 **CLASS ACTION ALLEGATIONS**

4 30. Plaintiff brings this action individually and on behalf of all others
5 similarly situated, as a member of the proposed class (hereafter "The Class")
6 defined as follows:

7 All persons within the United States who received any
8 telephone calls from Defendant to said person's cellular
9 telephone made through the use of any automatic
10 telephone dialing system or an artificial or prerecorded
11 voice and such person had not previously consented to
12 receiving such calls within the four years prior to the
filing of this Complaint

13 31. Plaintiff represents, and is a member of, The Class, consisting of All
14 persons within the United States who received any collection telephone calls from
15 Defendant to said person's cellular telephone made through the use of any
16 automatic telephone dialing system or an artificial or prerecorded voice and such
17 person had not previously not provided their cellular telephone number to
18 Defendant within the four years prior to the filing of this Complaint.

19 32. Defendant, its employees and agents are excluded from The Class.
20 Plaintiff does not know the number of members in The Class, but believes the Class
21 members number in the thousands, if not more. Thus, this matter should be
22 certified as a Class Action to assist in the expeditious litigation of the matter.

23 33. The Class is so numerous that the individual joinder of all of its
24 members is impractical. While the exact number and identities of The Class
25 members are unknown to Plaintiff at this time and can only be ascertained through
26 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
27 The Class includes thousands of members. Plaintiff alleges that The Class
28 members may be ascertained by the records maintained by Defendant.

1 34. Plaintiff and members of The Class were harmed by the acts of
2 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
3 and Class members via their cellular telephones thereby causing Plaintiff and Class
4 members to incur certain charges or reduced telephone time for which Plaintiff and
5 Class members had previously paid by having to retrieve or administer messages
6 left by Defendant during those illegal calls, and invading the privacy of said
7 Plaintiff and Class members.

8 35. Common questions of fact and law exist as to all members of The
9 Class which predominate over any questions affecting only individual members of
10 The Class. These common legal and factual questions, which do not vary between
11 Class members, and which may be determined without reference to the individual
12 circumstances of any Class members, include, but are not limited to, the following:

- 13 a. Whether, within the four years prior to the filing of this
14 Complaint, Defendant made any collection call (other than a
15 call made for emergency purposes or made with the prior
16 express consent of the called party) to a Class member using
17 any automatic telephone dialing system or any artificial or
18 prerecorded voice to any telephone number assigned to a
19 cellular telephone service;
- 20 b. Whether Plaintiff and the Class members were damages
21 thereby, and the extent of damages for such violation; and
- 22 c. Whether Defendant should be enjoined from engaging in such
23 conduct in the future.

24 36. As a person that received numerous collection calls from Defendant
25 using an automatic telephone dialing system or an artificial or prerecorded voice,
26 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
27 typical of The Class.

28 37. Plaintiff will fairly and adequately protect the interests of the members

of The Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

38. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

39. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

40. Defendant has acted or refused to act in respects generally applicable to The Class, thereby making appropriate final and injunctive relief with regard to the members of The Class as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

By Plaintiff and The Class Against Defendant

41. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-40.

42. The foregoing acts and omissions of Defendant constitute numerous

1 and multiple negligent violations of the TCPA, including but not limited to each
2 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

3 43. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
4 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.
5

6 44. Plaintiff and the Class members are also entitled to and seek
7 injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227 et seq.

By Plaintiff and The Class Against Defendant

13 45. Plaintiff repeats and incorporates by reference into this cause of
14 action the allegations set forth above at Paragraphs 1-40.

15 46. The foregoing acts and omissions of Defendant constitute numerous
16 and multiple knowing and/or willful violations of the TCPA, including but not
17 limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*
18 *seq.*

19 47. As a result of Defendant's knowing and/or willful violations of 47
20 U.S.C. § 227 *et seq.*, Plaintiff and the Class members are entitled an award of
21 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
22 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

23 48. Plaintiff and the Class members are also entitled to and seek
24 injunctive relief prohibiting such conduct in the future.

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THIRD CAUSE OF ACTION

Violations of the Rosenthal Fair Debt Collection Practices Act

Cal. Civ. Code § 1788 et seq.

By Plaintiff, Individually, Against Defendant

49. Plaintiff repeats and reincorporates by reference into this cause of action allegations set forth above at paragraphs 1-29.

50. To the extent that Defendant's actions, counted above, violated the RFDCPA, those actions were done knowingly and willfully.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
 - Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
 - Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Violations of the Rosenthal Fair Debt Collection Practices Act

Cal. Civ. Code § 1788 et seq.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendant for the following:

- A. Actual damages;
 - B. Statutory damages for willful and negligent violations;
 - C. Costs and reasonable attorney's fees;
 - D. For such other and further relief as may be just and proper.

TRIAL BY JURY

51. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted this 25th Day of April, 2018.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff